IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.259 OF 1993

Trimbak Ramling Bembalkar
of Bombay, Indian Inhabitant,
residing at 5-E, S.T. Quarters,
Keshavaji Naik Road, Chinchbundar,
Bombay--400 008. : Petitioner

V/s.

Maharashtra State Road Transport
Corporation, an authority constituted
under the Road Transport Corporations
Act, 1950, having its office at
'Maharashtra Vahatuk Bhavan',
Dr.Anandrao Nair Marg,
Bombay--400 008. : Respondent

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Mr.K.S.Bapat for the petitioner.

Mr.G.S.Hegde for the respondent.

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CORAM : H.L.GOKHALE & S.R.DONGAONKAR,JJ.

DATE : MARCH 27, 2006.

ORAL JUDGEMENT (Per Gokhale,J.)

1. Heard Mr.Bapat for the petitioner and Mr.Hegde for the

respondent.

2. The petitioner herein is a Stenographer working under the respondent-State Road Transport Corporation. He has been working as a Stenographer in Marathi, having joined in junior grade sometime in the year 1985 and after completion of 12 years of service in the Junior Grade, he was placed in the Senior Grade in the year 1997. The petition is filed by contending that the petitioner ought to have been given the promotion as a Senior Stenographer in the year 1988 and, for that purpose, the petition is filed to seek a mandamus that the petitioner be promoted to the post of Senior Grade Marathi Stenographer from the year 1988.

3. The case of the petitioner is based on a decision of the respondent-Corporation dated 20th December, 1985. There was a note placed for consideration of the Board prior to this decision. The note stated that there were some 16 posts of Senior Stenographers, both of English as well as in Marathi. According to the procedure for promotion to the post of Senior Stenographer, one has to either appear for the examination and get promoted or the equivalent grade is given after 12 years of service in the Junior Grade. It was, however, contended that as far as promotions of Marathi Stenographers are concerned, there

was no separate provision nor a separate promotional avenue. At the time when the note was put up, one Mr.P.K.Datar who had completed 12 years of service was being given the grade of Senior Stenographer, though he was continued to be designated as Junior Stenographer (Marathi).

4. It is further stated by the petitioner that along with Mr.Datar, one Mr.V.N.Deshmukh was also placed in the upgraded post of Stenographer (Marathi). This was done on 20.12.1985 on the basis of a Resolution of the Corporation which created two posts of Marathi Senior Stenographers. Mr.Deshmukh retired in June 1986 and one Mr.R.R.Pethe was promoted in his place. It is stated that thereafter Mr.Datar as well as Mr.Pethe were both promoted to the post of Personnel Assistant. It is, therefore, submitted that these two posts of Mr.Datar and Mr.Pethe had become vacant which ought to be made available to other Marathi Stenographers. The case of the petitioner is that he is entitled to one of the two posts.

5. The main case of Mr.Bapat appearing for the petitioner is that the note leading to the decision dated 20.12.1985 principally was meant for the post of Marathi Stenographers. It is in this background that he submitted that once there were two vacancies of Mr.Datar and

Mr.Pethe, they should have been automatically filled in by promoting those subordinate to them and in that, the petitioner was the first one. The note at exh.'A' to the petition shows Marathi Stenographers as per their seniority are as follows:-

1. Mr.P.K.Datar.
2. Mr.R.R.Pethe.
3. Mr.A.M. Chaphekar (Junior Stenographer, who is stated to have resigned).
4. Mr.T.R.Bembalkar (petitioner herein).

6. Thus, the case of the petitioner is on the basis of the Corporation's note leading to the decision dated 10.12.1985. The stand of the petitioner is that the idea behind the circular is to bring about more administrative work in Marathi. For that purpose, Marathi Stenographers had to be encouraged and, therefore, the petitioner was entitled to automatic promotion after the senior Stenographers were either promoted or retired. He submitted that the spirit of this Resolution ought to be kept in mind.

7. Mr.Hegde, learned counsel appearing for the respondent, on the other hand, submits that there cannot be any automatic promotion to such a higher post. As far

as the rigour of the alleged injustice is concerned, it is taken away by giving the petitioner the selection grade after completion of 12 years of service. That has been done in the year 1997. To say that the petitioner must be given the higher post the moment the Senior Stenographer moved further ahead means that the petitioner will have to be given this promotion in the year 1988. It is further pointed out that subsequently the petitioner appeared for the examination for promotion and he failed in that on 7.9.1993. Thus, the petitioner subsequently appeared for that particular promotion and failed. Having failed therein, he is canvassing the present petition seeking a mandamus as sought which cannot be granted, according to Mr.Hegde.

8. Mr.Hegde further submitted that as far as the promotions of Mr.Datar, Mr.Pethe and Mr.Deshmukh, they were effected at the particular point of time with a view to promote the use of Marathi and encourage Stenographers to take work in Marathi. That cannot mean that for all the time, the said posts ought to be filled in by simple promotion.

9. We are in agreement with the submissions of Mr.Hegde. It has been well laid down that there cannot be any right to seek promotion. One has only the right to be

considered for promotion. In Chandigarh Administration v. Jagjit Singh (AIR 1995 SC 705), it has been held down that one erroneous order does not permit and on the basis of one erroneous order, the High Court cannot compel an authority to repeat that illegality. Assuming that the appointment and promotion of Mr.Datar, Mr.Pethe and Mr.Deshmukh were special cases, that cannot give a right to anybody on a similar footing that he ought to be given the post of Senior Stenographer. The person concerned must either pass the examination or become eligible for selection grade on completion of 12 years of service. That grade was given in the instant case. Having failed in the examination subsequently, the petitioner cannot approbate and reprobate, nor can he seek a mandamus that the respondent be directed to promote the petitioner from the year 1988, particularly on the basis that his senior moved further ahead. The employee concerned must either pass the examination or become eligible by putting the requisite number of years of service. The petitioner has been given the pay of the selection grade and the only question is giving it to him from a prior date and a higher designation. For the reasons stated, in our view, that cannot be done.

10. The petition is, therefore, dismissed without any order as to costs. The rule stands discharged.

H.L. GOKHALE, J.

S.R.DONGAONKAR, J.